

(2) A physician is providing ongoing oversight and supervision of the therapy being provided.

(3) The marriage and family counselor, pastoral counselor, and mental health counselor must certify on each claim for reimbursement that a written communication has been made or will be made to the referring physician of the results of the treatment. Such communication will be made at the end of the treatment, or more frequently, as required by the referring physician (refer to section 199.7).

(4) Marriage and family counselors and pastoral counselors shall have the following:

(5) Mental health counselors shall have the following:

(i) Minimum of a master's degree in mental health counseling or allied mental health field from a regionally accredited institution, and

(ii) Two years of post-master's experience which includes 3,000 hours of clinical work and 100 hours of face-to-face supervision.

(6) These providers must also be licensed or certified to practice as a marriage and family counselor, pastoral counselor or mental health counselor by the jurisdiction where practicing; or if the jurisdiction does not provide for licensure or certification, is certified by or is eligible for membership in the appropriate national or professional association that sets standards for the profession.

3. Section 199.7 (e)(3) is revised as follows:

§ 199.7 Claims Submission, review, and payment.

(e) . . .

(3) Claims involving the services of marriage and family counselors, pastoral counselors, and mental health counselors. CHAMPUS requires that marriage and family counselors, pastoral counselors, and mental health counselors make a written report to the referring physician concerning the CHAMPUS beneficiary's progress. Therefore, each claim for reimbursement for services of marriage and family counselors, pastoral counselors, and mental health counselors must include certification to the effect that a written communication has been made or will be made to the referring physician at the

end of treatment, or more frequently, as required by the referring physician.

Patricia H. Means,
OSD Federal Register Liaison Officer,
Department of Defense.
February 17, 1988.
[FR Doc. 88-3708 Filed 2-23-88; 8:45 am]
BILLING CODE 2010-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 22

[FRL-3294-4]

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today EPA is promulgating a final regulation which extends the applicability of the consolidated rules of practice governing the administrative assessment of civil penalties and the revocation and suspension of permits, 40 CFR Part 22, to administrative enforcement actions taken pursuant to section 9006 of the Solid Waste Disposal Act (SWDA), commonly referred to as the Resource Conservation and Recovery Act (RCRA). Section 9006 was added to the Solid Waste Disposal Act by the Hazardous and Solid Waste Amendments of 1984 (HSWA) as part of a new Subtitle I which provides for the regulation of underground storage tanks. Section 9006 of Subtitle I authorizes EPA to take enforcement action against any person who violates any requirement of Subtitle I. Administrative enforcement actions under section 9006 include orders assessing penalties and orders requiring both mandatory and prohibitive injunctive relief.

EFFECTIVE DATE: This rule is effective March 25, 1988.

ADDRESSES: The docket for this rule (Docket No. UST 8) is located at U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 A.M. to 4:00 P.M., Monday through Friday, except for public holidays. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost \$20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA/Superfund Hotline, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800)

424-9346 (toll-free) or (202) 382-3000 locally.

For information on specific aspects of this final rule contact: Joseph Schive, Office of Enforcement and Compliance Monitoring (LE-134S), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-3068.

SUPPLEMENTARY INFORMATION:

I. Authority

The consolidated rules of practice were promulgated on April 9, 1980, at 45 FR 24380, under the authority of sections 2002 and 3008 of the Solid Waste Disposal Act (SWDA), as well as under the authority of sections 14 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, sections 211 and 301 of the Clean Air Act, sections 105 and 108 of the Marine Protection, Research, and Sanctuaries Act, and section 16 of the Toxic Substances Control Act. This amendment to the consolidated rules of practice, 40 CFR Part 22, is issued under the authority of sections 2002 and 9006 of SWDA, as amended, 42 U.S.C. 6912 and 6901e.

II. Background

On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments of 1984. Among the significant changes included in HSWA is a major new program for the regulation of underground storage tanks, found in the new Subtitle I of SWDA, sections 9001-9010.

In response to the new regulatory program provided for in Subtitle I, EPA published several documents to assist the regulated community in understanding the technical and procedural requirements of Subtitle I. On November 8, 1985, EPA published in the Federal Register, 50 FR 46602, a final rule on notification requirements for owners of underground storage tanks, and on June 4, 1986, EPA also published in the Federal Register, 51 FR 20418, an interpretative rule on the interim prohibition against installation of unprotected underground storage tanks. In June 1986, EPA's Office of Underground Storage Tanks also published technical guidance entitled, "The Interim Prohibition: Guidance for Design and Installation of Underground Storage Tanks." On September 16, 1986, EPA issued a guidance memorandum entitled, "Enforcement Strategy and Procedures for the Interim Prohibition", which explained, *inter alia*, that the Consolidated Rules of Practice were to be used for hearings for violations of Subtitle I conducted under section 9006. On April 17, 1987, EPA published in the

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FACILITY Pat & Whitney-Mann St
I.D. NO. CTD990672081
FILE LOC. R-1B
OTHER RDMS #2422

Federal Register, 52 FR 12662, a proposed rule which sets out technical standards and financial responsibility requirements which are applicable to underground storage tanks.

On July 6, 1987, EPA published in the Federal Register, 52 FR 25255, a proposed rule to codify an extension of the Consolidated Rules of Practice to hearings on administrative enforcement actions taken pursuant to section 9006 of Subtitle I. The proposed rule provided a 60-day comment period which closed on September 4, 1987. Several comments were received from four commenters on the proposal and these are discussed below.

III. Response to Comments

Two commenters requested clarification on how the recent Supreme Court decision in *Tull v. United States*, _____ U.S. _____, 107 S.Ct. 1831 (1987), ("*Tull*"), will affect administrative enforcement actions which assess civil penalties under section 9006. One commenter suggested that *Tull* imposes a jury trial requirement prior to the assessment of a penalty for violations of Subtitle I. EPA disagrees. EPA believes that footnote 4 of the *Tull* decision and the line of cases cited therein make clear that the decision in *Tull* does not apply to administrative proceedings. For this reason, EPA concludes that the *Tull* decision does not affect the hearings provided for administrative enforcement actions under section 9006.

Three commenters responded to the issue raised in the preamble to the proposed rule regarding the appropriateness of the Part 22 procedures for administrative orders which seek injunctive relief, as well as those which seek civil penalties or permit revocation. Two commenters indicated that they favored the use of the Part 22 procedures in each instance, because they believed the procedural protections in the Part 22 procedures were consistent with due process. One commenter preferred the "streamlined" procedures which have been proposed for RCRA section 3008(h) corrective action orders, 52 FR 29222 (August 6, 1987), because he felt these procedures would be less burdensome to respondents of orders.

The Agency has decided not to use the "streamlined" procedures at this time for hearings under section 9006 for violations of Subtitle I requirements, as opposed to corrective action orders under section 3008(h). The Agency will continue to explore alternatives to the Part 22 procedures which will meet the demand for quick resolution of disputes, as well as adequate procedural due process. In the interim, however, the

Agency has decided that the established procedures in Part 22 should be used for administrative hearings on both compliance orders and orders assessing penalties under section 9006. Because these procedures are used generally for hearings on orders on RCRA violations, EPA believes that to avoid confusion in the interim over the type of hearing applicable, it should continue to use the Part 22 procedures for all such orders until it has had time to complete its evaluation of alternative procedures.

IV. Executive Order No. 12291

Executive Order No. 12291 requires that all proposed and final regulations must be classified as major or non-major rules. The Agency has determined that this final rule is a non-major rule under Executive Order No. 12291 because it will not result in any of the impacts delineated in the Executive Order.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant economic impact on a substantial number of small entities." As required by the Regulatory Flexibility Act, EPA hereby certifies that this final rule will not have a significant impact on small business entities.

List of Subjects in 40 CFR Part 22

Administrative procedures and practice, Hazardous materials, Penalties, Solid Waste Disposal Act, Underground storage tanks.

Dated: February 9, 1988.

Lee M. Thomas,
Administrator.

For the reasons stated in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION OR SUSPENSION OF PERMITS.

1. The authority citation for Part 22 is revised to read as follows:

Authority: Sec. 16 of the Toxic Substances Control Act; Secs. 211 and 301 of the Clean Air Act; Secs. 14 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act; Secs. 105 and 108 of the Marine Protection, Research, and Sanctuaries Act; Secs. 2002, 3006, and 9006 of the Solid Waste Disposal Act; and Sec. 501 of the Clean Water Act.

2. Section 22.01 is amended by revising paragraph (a)(4) to read as follows:

§ 22.01 Scope of these rules.

(a) . . .

(4) The issuance of a compliance order or the assessment of any civil penalty under sections 3008 and 9006 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6928 and 6991e);

[FR Doc. 88-3775 Filed 2-23-88; 8:45 am]

GILLING CODE 0000-00-01

40 CFR Part 180

[PP 3F2824/R915; FRL-3331-1]

Pesticide Tolerance for Cypermethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide cypermethrin in or on the raw agricultural commodity head lettuce. This regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested pursuant to a petition by the FMC Corp.

EFFECTIVE DATE: Effective on February 24, 1988.

ADDRESSES: Written objections, identified by the document control number [PP 3F2824/R915], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, (PM) 15, Product Manager (PM) 15, Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of April 13, 1983 (48 FR 15951), which announced that the FMC Corp., 2000 Market St., Philadelphia, PA 19103, had submitted a pesticide petition (PP 3F2824) to EPA proposing to amend 40 CFR 180.418 by establishing a tolerance for residues of the insecticide cypermethrin [(±)alpha-cyano-(3-phenoxyphenyl)methyl(±)-cis,trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] and its metabolites cis,trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and 3-phenoxybenzoic acid (3-PB Acid) (sum of cypermethrin plus